

## **GENERAL TERMS AND CONDITIONS** for the sale and provision of software support services

As at: March 2019

### **1. Contract scope and validity**

1.1 The following conditions are valid for all services and deliveries that the contractor performs within the context of a contract concluded with an entrepreneur according to § 14 of the Civil Code for installed computer systems. Client conditions of purchase are hereby excluded for this legal transaction and the entire business relationship. Offers are strictly subject to change.

### **2. Scope of delivery**

2.1. Unless otherwise agreed, the contractor chooses to provide the contractual services either at the computer system's location or at the contractor's business premises during the contractor's normal working hours as agreed on in this contract. If, in exceptional cases and at the client's request, services are rendered outside the agreed normal working hours, the additional costs are charged separately. The contractor is responsible for selecting the staff member to render the contractual services, and is also entitled to call on third parties for this.

2.2. The contractor is obliged to fulfil the contractual software support services as per the following delivery scope:

- **Information service:**

- The client is informed of new program versions, available updates, program developments etc.

- **Hotline service:**

In the event of problems, the client will be able to contact the contractor during the contractor hotline times agreed on in this contract for advice relating to using the contractual software programs for a contact person known personally by the client. If these advisory services are used repeatedly for similar problems, the contractor is entitled to make further contractual consultations dependent on additional, non-contractual training measures liable to costs.

- **Archiving and providing the contractual software programs:**
- The contractor commits to archiving the contractual software programs it develops in computer-readable format, and to documenting this as necessary to fulfil the contractual obligations. If required, it provides these to the client as per the provisions of the contract on which the purchase is based.
- **Update service:**  
The contractor stipulates a time to provide the client with the program updates supplied by the manufacturer. These updates include correction of errors, rectification of any program problems not appearing during test runs or practical usage covered by the warranty, and/or improvements on the service scope.
- **Installation of program updates:**  
The contractor helps import/set up the new program update onto the contractual computer system for max. one development system and one productive system, whereby the update must be imported by the client within 6 months. If the client does not perform the update within 6 months, the contractor is entitled to terminate the existing maintenance contract.
- **Handling problems:**  
The handling of problems relating to the contractual service scope requires remote access, which is provided to the contractor free of charge, and must comply with the latest standard of technology.
- **Software requirements:**
- These are defined in the contract.
- **Troubleshooting:**  
An error requiring action exists if the contractual software program behaves differently to what is stated in the latest version of the relevant service description/documentation, and this can be reproduced by the client.  
Complaints must be addressed to the contractor in writing. To more accurately examine any errors, the client is obliged to provide the contractor, free of charge, with the computer system it uses (including the relevant connection for systems linked with other computers online), software programs, protocols, diagnostic documents and sufficient data for test purposes during normal working hours agreed on in the contract, and to assist the contractor. Any detected errors caused by the contractor must be rectified by the contractor within an appropriate time frame.  
The contractor is exempted from this obligation if defects caused by the client prevent this, and are not rectified by the client.  
The error is fixed by a software update or appropriate emergency solutions.

### **3. Services not covered by the contract**

- 3.1. Unless otherwise explicitly stated in the contract, the call-out costs for the persons hired by the contractor to perform the service must be paid for separately by the client.
- 3.2. In the event of unjustified use of services, the contractor is entitled to charge the client for the incurred costs based in the applicable rates.
- 3.3. Services caused by operating system changes, hardware changes and/or changes to non-contractual, mutually program-dependent software programs and interfaces.
- 3.4. Individual program adjustments/reprogrammings.
- 3.5. Program changes based on changes to the legal regulations.
- 3.6. The contractor is exempted from all obligations resulting from this contract if program changes are made to the contractual software programs by the client's staff or third parties without the contractor's prior consent, or if software programs are not used in accordance with the agreement or the purpose of the contract
- 3.7. Rectification of errors caused by the client or third parties.
- 3.8. Losses or damage caused directly or indirectly by actions or omissions during operation by the client or user.
- 3.9. Data conversions, recreation of data sets and interface adjustments.
- 3.10. Installation of the contractual software programs.
- 3.11. Specialised training.
- 3.12. Rectification of errors caused through incorrect operation by the client or its people.
- 3.13. Adjustment of print-outs , forms and screen masks etc.
- 3.14. Data imports/exports.
- 3.15. Data recording/Creating or changing master data and control data.
- 3.16. Adjustment of interfaces to protocols modified by third parties.
- 3.17. Migration/Porting to a system environment other than the contractually agreed one (computer, operating system, database, interfaces).
- 3.18. Maintenance of IT infrastructure (hardware, network, periphery etc.).
- 3.19. Tuning measures.
- 3.20. Maintenance of test systems for the client.

### **4. Prices**

- 4.1. The prices stated in the contract are ex the place of performance. The costs for program data carriers, as well as documentation and any contractual fees, are charged separately.
- 4.2. For services may rendered at the contractor's premises, but which can, at the client's request, be performed at the client's premises as an exception, the client bears the call-out charges for the persons hired by the contractor to render the service.

- 4.3. The contractor is entitled to increase the contractually agreed flat rates accordingly in the event of increases in wage/material costs or other costs and levies occurring at the time of contract conclusion, and to charge the client at the start of the month following the increase. The adjustment amount is governed by the original values of the Labour Cost Index of the Federal Statistical Office for Economic Information and Communication (WZ08-J), which is published on the Internet in the GENESIS-Online database of the Federal Statistical Office. The contractual flat rates are also increased accordingly for customer-specific program expansions.
- 4.4. All fees and taxes (especially sales tax) are calculated based on the applicable legislation. If the tax authorities subsequently stipulate further taxes or levies, these are borne by the client.

## **5. Delivery periods and acceptance**

- 5.1. The contractor endeavours to provide information at the client's request within an appropriate time frame during the contractor's agreed normal working hours.
- 5.2. The client is not entitled to withdraw from the contract or claim damages if the estimated deadlines are exceeded.
- 5.3. Partial deliveries and advance deliveries are permitted.
- 5.4. The services of the contractor have to be accepted by the client in each case immediately. The usage of services has effectively been approved if the client does not claim any performance deficiencies by the next business day after the provision of the service.

## **6. Payment**

- 6.1. The agreed flat amounts are payable by the client in advance for the contractual year/partial year.
- 6.2. Bills including VAT are payable within 14 days from invoice date, without any deduction.
- 6.3. The observance of agreed payment deadlines is an important condition for ensuring the contractor makes the delivery/fulfils the contract. Delay of payment entitles the contractor to cease current work and withdraw from the contract. All associated costs and damages, as well as lost profit in particular, must be borne by the client.  
In case of late payment, the contractor is allowed to charge interests for default.
- 6.4. The client is not entitled to withhold payments for incomplete delivery, guarantee or warranty claims, or complaints.

## **7. Contractual term**

- 7.1. The contractual relationship, which requires correct installation of the duly purchased contractual software program, commences upon signature of the contract, and is concluded for an indefinite time.

7.2. This contract can be terminated in writing by a contractual partner at the end of a contractual year with three months' notice, but not before the end of the 36th contractual month from the inception of treaty. If the contractual software program is proven to be out of order or lost by the client, the contractual relationship can be ended earlier, with a three-month termination period. In this case, the aliquot portion of the annual flat rate is transferred to a domestic bank account advised by the client for the unused service.

## 8. Liability and warranty

8.1. The contractor is liable for damage caused by him or his entities or agents on account of intentional or grossly negligent behavior. Liability for slight negligence is excluded except in cases of injury to life, body or health or liability according to the Product Liability Act. Additionally, the contractor is liable even for slight negligence for commonly expected and foreseeable damages incurred upon violation of one of the essential contractual obligations.

The term for the warranty period is 12 months starting with the approval of the re-spective services. The contractor is initially entitled to subsequently correct the defect in case of a warranty claim. In case of a justified deficiency claim, the deficiencies will be resolved within an appropriate time frame while the client must allow the contractor to perform all measures that are necessary for the proper examination and correction of the deficiency.

## 9. Location

9.1. The location of the contractual computer system is specified in the contract. In the event the computer systems are relocated, the contractor is entitled to re-set the flat cost rate or prematurely terminate the contract.

## 10. Copyright and use

10.1. The contractor/its licensors are entitled to all copyrights to the agreed services (programs, documentation etc.). After paying the agreed fee, the contractor exclusively receives the right to use the software simultaneously at several work stations for its own purposes, only for the hardware specified in the contract, and only based on the number of licences acquired.

10.2. This contract only gives rise to a "Werknutzungsbewilligung" (Permit to use copyrighted work). Distribution by the client is not permitted. The client's participation in manufacturing the software does not entitle it to any rights to the usage established in this contract. Any breach of the contractor's copyrights results in damage claims, whereby full compensation must be paid.

10.3. The client can make copies for archiving and data protection purposes, on condition that the software does not contain an express ban imposed by the licensor or third parties, and that all copyright and ownership information in these copies is transferred unchanged.

10.4. If interfaces need to be disclosed to ensure interoperability of the software, the client must ask the contractor to do this, for a fee. If the contractor does not comply with this request, and decompilation occurs as per the copyright act, the results must only be used to create interoperability. Misuse results in damages.

## **11. Loyalty**

11.1. The contractual partners commit to ensuring mutual loyalty. They will refrain from enticing and employing (including through third parties) the other contractual partner's staff involved with processing the orders for the duration of the contract and for 12 months after its termination. Any contractual party breaching this is obliged to pay a lump sum of damages totalling the staff member's annual salary.

## **12. Privacy and confidentiality**

12.1. The contractor obligates his employees to keep the client's data confidential and exclusively reveal this data for the purpose of providing a service for the client during the time frame of the employment relationship upon explicit request of the client; this refers to data from data applications that have been entrusted or made available to employees within the context of providing a service for the client.

## **13. Other**

13.1. Should individual provisions of this contract be or become invalid, this shall not affect the rest of this contract. The contractual parties will work as partners to establish a rule which comes as close as possible to the invalid provisions.

## **14. Final provisions**

14.1. Unless otherwise agreed, the legal provisions applicable between contractor and client are exclusively subject to German law, even if the order is executed abroad. Any disputes are exclusively settled by the local court with jurisdiction over the contractor's place of business.